IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2450 of 2000
with
SPECIAL CIVIL APPLICATION NO. 2737 of 2000
with
SPL. C. A. NOS. 3334 OF 2000 TO 3351 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

FARENI VIVIDH KARYAKARI SAHKARI SEVA MANDALI LTD.
Versus
A V VADHER

Appearance:
SCA No. 2450 of 2000

MR N.D. NANAVATI, SR. ADVOCATE WITH MR. TUSHAR MEHTA for Petitioner
MR. A.D. OZA, G.P. for respondent No. 1
MR. JAYANT PATEL for respondent Nos. 2 to 64

SCA No. 2737/2000, 3336/2000, 3345/2000 & 3346/2000

MR. K.G. VAKHARIA, SR. ADVOCATE WITH MR. HRIDAY BUCH for petitioners
MR. A.D. OZA, G.P. / MR. TRIVEDI, AGP for respondent

SCA No. 3334/2000, 3335/2000, 3337/2000 to 3344/2000

MR. SHERISH JOSHI WITH MR. BAIJU JOSHI for the petitioner
MR. A.D. OZA, G.P. for the respondent

SCA No. 3347/2000 to 3351/2000

MR. SHERISH JOSHI WITH MR. BAIJU JOSHI for the petitioner
MR. U.A. TRIVEDI, AGP, for respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 26/04/2000

COMMON ORAL JUDGEMENT

Rule. Service of rule is waived by the learned advocates appearing for respective various respondents. Upon request and in view of the urgency in the matter and since the polling of election of the Managing Committee of Shri Rajkot District Co-operative Bank Limited (`Bank' for short), is scheduled to be held tomorrow i.e. on 27.4.2000 and common questions are raised, they are being disposed of by this common judgement as requested.

SCA NO. 2450 OF 2000

2. This petition is filed by a Co-operative Society - Bank registered under the Gujarat Co-operative Societies Act, 1961 (`Act of 1961' for short) against the returning officer for election of the Managing Committee of the Bank and 62 other respondents who are affiliated Co-operative Societies to the specified Co-operative Society - Bank whose names are included in the final voters' list for the said election, who were in the preliminary list of the voters, were shown as disqualified being defaulters in payment of dues of the bank. For the sake of convenience and brevity, this petition is referred to, hereinafter, as the "first petition".

3. The main contention in the petition is that as a part of political design of the party in power in the State of Gujarat and with a view to ensure that the supporters of one Vithalbhai Radadia, shifted to a constituency to which they did not belong by including the names of 63 specified societies in the final voters

list. In short, the allegation is that the impugned action is taken with a view to tilt the balance and disturb the constituency in such a fashion that the supporters of Mr. Radadia did not get elected, though the respondents affiliated societies were defaulters.

4. Respondent No. 1, Returning Officer against whom allegations are made, has filed affidavit-in-reply, controverting the averments and allegations made in the petition. Allegation of political mala fide is not only specifically denied but is stated to be, totally, meritless, baseless and without any substance. It is also, specifically, stated by him that he has nothing to do with any political party or group and that he has taken action in accordance with the Rules and Bye-Laws.

5. It is, also, categorically stated by the Returning Officer that respondent Nos. 2 to 63 were in the disqualified voters' list but as per their declaration before him that there were no overdues towards the bank before preparation of the final voters' list and hence it was incumbent upon him to enter their names in the final voters' list as they were entitled to be included in view of the fact that all 63 respondents affiliated societies were fulfilling the requisite criteria and none of them was found defaulter. They as such paid their dues before the date of objections and claims like that on 21.3.2000.

SCA NO. 2737 OF 2000 - WITH 18 GROUP MATTERS (SECOND GROUP OF PETITION)

6. In the second group of petitions the petitioners are registered Co-operative Societies affiliated to the specified Co-operative Society like that Shri Rajkot District Co-operative Bank Ltd. (`Bank' for short). The petitioner societies are the members of the Bank. The only respondent is Returning Officer against whom the relief is sought.

7. In second group of petition it is inter alia contended that names of the petitioners are not included in the final list of voters showing them as defaulters is patently, wrong, erroneous and against the strength of the documents. They also contended that they are supporters of Mr. Vithalbhai Radadia who is now strong opponent of the ruling party in Gujarat State. In view of the active role played by Mr. Radadia and his supporters like petitioners, out of political vendatta, the present ruling party in Gujarat, Bhartiya Janta

Party, through the respondent got 19 petitioners societies' names wrongly included in the defaulters list and also wrongly excluded from the final voters' list by the respondent. Therefore, the petitioners in the second group of petitions have sought for a direction for quashing the impugned action of the respondent Returning Officer and seeking direction for inclusion of their names in the final voters' list.

8. The respondent Returning Officer has filed affidavit in reply and has denied the allegations made in the petition. It is specifically denied that any political pressure of the party in power has played role in excluding the names of the petitioners from the final voters' list by showing them as defaulters. As per his affidavit, action taken by him in showing the names of petitioner societies as defaulters and resultant non-inclusion in the final voters' list is as per the provisions of the Gujarat Co-operative Societies Act, Rules and Bye-Laws of the Bank.

FACTUAL MATRIX AND STATUTORY AND LEGAL PROPOSITIONS:

9. 63 Respondents are the Co-operative Societies in the first group of petition whereas 19 petitioners are also Co-operative Societies in the second petition and they are duly registered under the provisions of the Gujarat Co-operative Societies Act, 1961 (`Act of 1961' for short). They are also members of Shri Rajkot District Co-operative Bank Ltd., (`Bank' for short) which registered under the Gujarat Specified Co-operative Societies Elections to Committees Rules, 1982 (1982 Rules). It is a specified Society under the Rule 2(ia). Thus, society means a society specified under sub-section (1) of Section 74-C of the Act of 1961. 63 respondent Co-operative Societies are respondents Co-operative Societies in the first group of petition and 19 petitioners Co-operative Societies in the second group of petition are affiliated societies to the specified society, namely, Bank.

10. In both group of petitions common contention is that 19 affiliated societies to specified society - Bank designedly excluded from the final voters' list and it is the outcome of political motivation. It is a common fact that the custodian is appointed in purported exercise of powers under Section 74D of the Act of 1961. Appointment of custodian was subject matter of challenge before this court in Special Civil Application No. 1571 of 1999 and Letters Patent Appeal No. 264 of 1999.

11. In L.P.A. No. 264 of 1999 the order of custodian came to be quashed by its order dated 17.3.1999 which came to be recalled by the order dated 18.3.1999 against which Special Leave Petition (Civil) No. 5206 of 1999 has been filed and is pending before the Hon'ble Supreme Court in which leave was granted in the matter and is pending for final hearing with interim orders. It is also common contention that both the sides are willing to see that the election of the Managing Committee of the Bank is held. The Hon'ble Supreme Court has also passed an order date 10.12.1999 directing to hold elections within four months. The petitioners have therefore contended that despite such a direction, arbitrarily, no steps were taken to hold the election as the party in power was fully conscious of the fact that it will not get sufficient support from the members.

MISCELLANY OF MATERIAL, RELEVANT LEGAL AND INCIDENTAL FACTUAL SCENARIO

12. The petitions are pertaining to the dispute to the election of the Bank which is a specified Co-operative Society within the meaning of Section 74-C of the Act of 1961. Therefore, the elections of the Managing Committee, popularly, known as Board of Directors, are required to be conducted in accordance with the provisions contained in Chapter XI-A of the Act read with the provisions prescribed in the Procedure under 1982 Rules.

13. The Constitution of the Managing Committee (Board of Directors) of the Bank is as per Bye-Laws No. 30(1) of the Bye-Laws of the Bank. Pursuant to the said relevant provisions, Managing Committee consisted of following 17 elected Directors from different constituencies, as stated hereinbelow:

S.No.	No. of Directors	Constituency
1.	13 Directors	Agricultural and Multi purpose Co-operative Society.
2.	2 Directors	Non-agricultural Credit and other Co-operative Societies.
3.	1 Director	Marketing and Processing Co-operative Societies

4.	1 Director	Co-operative	Societies not falling in the above referred three Constituencies (known as Itar Mandali Constituency)

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17 Directors

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14. The dispute arising out of these group of petitions is regarding election of 13 Directors to be elected from the Constituency of Agricultural and Multi purpose Co-operative Society. Preparation for the election like that voters' list, fixing date for poll and then result are governed by the Rules 1982. It would be, therefore, at this stage, interesting to note the relevant Rules and provisions.

15. Rule 4 of the Rules 1982 prescribes for provisional list of voters and the manner and methodology. Rule 4 reads as under:-

"Provisional list of voters (1): A provisional list of voters shall be prepared in Gujarati by every society for the year in which general election is due to be held. Persons who are members as on the date of drawing up the accounts of the year immediately preceding the year (in which such election is due) shall be included in the provisional list. If different constituencies are provided in the bye-laws, the names of voters shall be arranged constituency wise as laid down in the bye-laws.

(2) Four copies of the authenticated provisional lists of voters shall be sent by every society to the Collector, through the District Registrar so as to reach the Collector within 15 days from the date of drawing up the accounts of the year in which the general election is due. Copies of the said list shall be displayed on the notice board of the society, the District Registrar concerned and the Collector within 20 days, from the date of drawing up the accounts for inviting claims and objections.

(3) Simultaneously with sending of provisional list of voters under sub-clause (2) every society shall send in writing to the Collector a list of

members who are disqualified to vote as per the provisions of the Act, Rules or its Bye-Laws and shall inform to the member who has been shown disqualified in the said list in writing, pointing out such disqualification incurred by him. The said list shall be treated as objection under sub-rule (3) of Rule 6.

(4) If any society fails to send copies of the provisional list of voters to the Collector through the District Registrar concerned within 15 days from the date of drawing up the accounts, the Collector shall himself or through any person authorised by him in this behalf prepare a provisional list of voters and the expenditure incurred therefor shall be recovered from the society as arrears of land revenue.

(5) In the event of the Collector taking action under sub-rule (4) he shall also cause copies of the provisional list of voters to be displayed on his notice board and on the notice board of the District Registrar concerned and the society within 23 days from the date of drawing up the accounts, for inviting claims and objections."

16. Bye-Laws No. 26(4) of the Bank prescribes disqualification from participating in the election process which is relevant and therefore it is reproduced here as under for ready reference:

"26(4) If an affiliated society affiliated to the Bank is in default in repayment of amount to the Bank, the representative of such society will not be entitled to vote or support in the general meetings or election of the Bank."

17. The Bank while sending the provisional voters' list under Rule 4 sub-rule (3) had also separate list showing the names of those members who under the Bye-law 26(4) of the Bye-Laws were disqualified. The Bank sent a list of 101 members who were disqualified under the Bye-law 26(4) of the Bye-Laws pertaining to the constituency of Agricultural and Multi Purpose Co-operative Society. The petitioners affiliated societies belonged to the said constituency and therefore challenge is restricted to that constituency only.

18. The Returning Officer had published provisional list under Rule 4 of 1982 Rules and objections to that

list had been invited as required under Rule 6 of the 1982 Rules. The petitioner societies are enlisted in the list of disqualified societies furnished by the Bank. Disqualified societies have no right to take part in general meeting of the society or in election. The Returning Officer had given an opportunity of hearing by issuance of notice under postal certificate and thereafter after hearing was fixed on March 27, 2000. The petitioner societies failed to remain present or furnish certificate in support of their claim and therefore objections raised by the came to be rejected as per the affidavit of the Returning Officer. Whereas, the objections raised by 63 respondent Co-operative societies in the first group of petition came to be included in the final voters' list as they were found not defaulters under Bye-Law 26(4) of the Bye-Laws and their objections were upheld by the Returning Officer, with the result 63 respondent co-operative societies in the first group of petition got included in the final voters' list which was finalised on 30.3.2000. Their inclusion is challenged in the first group of petition. Whereas non-inclusion of 19 petitioner co-operative societies in second group of section as according to the Returning Officer they were defaulters came to be questioned.

19. A preliminary objection was raised that in view of the directions contained in the order of the Hon'ble Supreme Court in I.A. No. 2 in petition for Special Leave to Appeal (Civil) No. 8195 of 1999 and pendency of writ before the Hon'ble Supreme Court, the learned advocate Mr. Patel for the respondent in third group of such petitions which is separately decided pertaining to cancellation of nomination forms by the Returning Officer contended that same point would apply in the present group of petitions also.

20. The preliminary objection raised by the learned advocate Mr. Patel is, seriously, opposed and controverted by the learned Government Pleader Mr. Oza appearing for the respondent.

21. In order to appreciate preliminary objection, it would be expedient and profitable to reproduce the order of the Hon'ble Supreme Court relied on by Mr. Patel. It is as under:-

> "Upon hearing counsel the court made the following order:
>
> It is common ground that the elections should be held. There is some dispute whether it should be held according to the 1995 election rolls or

rolls to be prepared now. That is for the Returning Officer to decide. The elections should be held within a period of four months from today.

I.A. No. 2 is disposed of accordingly.

Sd. Sd.
(T.I. Rajput) (S. Sen Gupta)
Court Master Court Master

22. In support of his contention Mr. Patel has also placed reliance on a decision of the Hon'ble Supreme Court rendered in STATE OF U.P. VS. SYNTHETIC AND CHEMICALS LTD. reported in 1991(4) SCC 139. Learned Government Pleader Mr. Oza has submitted that the order of the Hon'ble Supreme Court cannot be interpreted that present petition under Article 226 of the Constitution cannot be entertained from propriety point of view. He has also submitted that the interpretation made by learned advocate Mr. Patel, out of reading the order of the Hon'ble Supreme Court, is misconceived and is required to be rejected. He has also canvassed that even remotely it cannot be contended that in case of any challenge against inclusion, non-inclusion or rejection of nomination form for the elections scheduled to be held as per the directions of the Hon'ble Supreme Court should mean the helplessness of the High Court in exercise of writ jurisdiction under Article 226 of the Constitution. He, also, submitted that the contention that from propriety point of view, this court should not deal with and decide the petitions pertaining to the election is, totally, without any substance. Again he has submitted that if the view which is propounded by Mr. Patel, which is not permissible but even if assumed to be acceptable, it would be unnecessarily adding the work of the Hon'ble Supreme Court and for every dispute by-passing the other statutory and constitutional remedy, matter will have to be taken to the Hon'ble Supreme Court. This does not seem to be the mandate of the aforesaid order. He has also distinguished the decisions relied on by Mr. Patel. In short, the submission of Mr. Oza is that neither Article 141 of the Constitution of India nor the principle of ratio decidendi, philosophy of judicial propriety in the facts of the present case would not be attracted.

23. Learned Advocate General Mr. J.M. Thakore who was requested to assist the court on the point of preliminary objection raised by the learned advocate Mr. Patel, has also supported the submissions raised by the

learned Government Pleader Mr. Oza. Learned Advocate General has taken the court through the entire case relied on by Mr. Patel together with the facts of the present group of petitions and also highlighting the doctrine of ratio decidendi, judicial propriety, provisions of Article 141 of the Constitution, has forcefully contended that the preliminary objection, in the facts situation of the group of petition, is meritless and cannot be sustained. Explaining in a very forensic way the facts of the decision in STATE OF UP VS. SYNTHETIC AND CHEMICALS (supra) (supra) relied on by Mr. Patel and facts of the present group of petitions, learned Advocate General has clearly stated that in a fact situation of the present group of petitions, the said decision is not relevant and applicable and has categorically propounded that this court can entertain and adjudicate petitions from legal propriety and practical perceptions and purpose.

24. After having taken into account various submissions and rival versions and the facts situation in the case of STATE OF U.P. VS. SYNTHETICS AND CHEMICALS LTD. (supra) and the peculiar facts and special circumstances obtainable in these group of petitions and the order of the Hon'ble Supreme Court before whom it was a common ground that election should be held expeditiously, the preliminary objection raised by Mr. Patel is meritless and since the polling date is scheduled tomorrow as per the schedule, apart from the plea being non-practicable, non-sustainable, it would again lead to the procrastination and it would obviously run diametrically opposite to the plea, purpose and philosophy with which over due elections are directed to be held by the Hon'ble Supreme Court in the said order.

25. It would be, also, interesting to note that there was some dispute whether election should be held according to 1995 election rolls or rolls to be prepared now. On this point the Hon'ble Supreme Court has directed that it is for the Returning Officer to decide and further directed that election should be held within a period of four months from the date of the order. This also shows that the prime anxiety was to direct to hold the election since the election has not been held for wrong. The incidental or any subsequent question, point or issue pertaining to holding of election process and arranging for early election by effective and efficient election mechanism, it is for the appropriate authorities or forums to deal with and decide. This appears to be the real and correct underlying design and desideratum. In the circumstances, this court does not find any

justification whatsoever in the preliminary objection raised by learned advocate Mr. Patel and full justification appears to be in the contention raised by the learned Government Pleader and the learned Advocate General. It may be also stated, at this stage, that on being asked the question, pointedly, as to what would be the jurisdictional impact and ramification of the order of the Hon'ble Supreme Court in entertaining the petition, Mr. Patel, only, could say that it may not be advisable from the propriety point of view which means there is no any legal ban or ban in entertaining, determining and adjudicating incidental disputes such as raised in these group petitions. In such circumstances, the preliminary objection must meet with the only fate of summary rejection and accordingly it is rejected.

26. At the same time it must be placed placed on record that this court is befolden to the learned Advocate General for his assistance and advice in dealing with and deciding the preliminary issue.

RELEVANT PROFILE AND LEGAL SET UP:

27. Doubtless, law of election is one of the fields where valuable and statutory rights of citizens are vitally affected. It is necessary to harmonise the right of a voter and a candidate and corresponding interest of the society to run its elected bodies efficiently, effectively and smoothly without needless procrastination, force by avoidable legal proceedings. In this context, following aspects may be highlighted so far as the propositions of law of election are concerned:

(1) Ordinarily, the power of court under Article 226 of the Constitution of India will not be exercised when alternative, efficacious remedy is provided for statutorily;

(2) Article 329 of the Constitution declares that no court can question any law relating to the delimitation of constituencies or the allotment of seats to such constituencies. No election to the legislature can be also questioned except by an election petition.

(3) It means that constitutional veto prohibits filing or availing of civil remedy in a civil court by filing a suit question any election where mechanism for election Tribunal or any forum for trial of disputes has been provided.

Even in Section 145-U of the Gujarat Co-operative Societies Act, 1961, a provision is made whereby Election Tribunal is constituted and disputes relating to the elections are to be submitted and referred to such Tribunal.

(4) The Election Tribunal or forum for adjudication of the election disputes is aimed at and designed to expeditiously dispose of such disputes.

(5) Even under Section 80 of the Representation of People Act, 1951, the challenge against election can only be questioned or called for by filing or resorting to Election Tribunal pursuant to Section 116B.

(6) Ordinarily, therefore Article 226 of the Constitution can be employed or utilised at a later stage for questioning the orders of the Tribunal in a given fit case upon a constitutional or a legal issue.

28. Notwithstanding that Division Bench of this court in the case of MEHSANA DIST. CO-OP. PURCHASE AND SALES UNION LTD. VS. D.B.U.R. & V.K.S. MANDALI reported in in 18 G.L.H. 170 considering various decisions of the Hon'ble Supreme Court, has propounded and culled out following exceptions while entertaining and adjudicating a petition under Article 226 of the Constitution of India. The first principle is that all disputes arising out of election should be postponed till elections are over and ordinarily, such dispute should be adjudicated by Election Tribunals. Jurisdiction under Article 226 of the Constitution of India, ordinarily, not to be exercised so as to arrest election process. Statutory right for enforcement to which remedy has been provided in the statute has to be resorted to except:

(1) If the action is illegal as opposed to the statutory provision;

(2) or in violation of principles of natural justice

(3) it is ultra vires

29. This Court in Mehsana District Co-operative Purchase & Sales Union Ltd. (supra) (Coram: K.G. Balakrishnan, C.J. and A.K. Trivedi, J), clearly, propounded that in case of any one of the exceptions they are being exceptional cases, the High Court can exercise its jurisdiction invoking the aid of the provision under

Article 226 of the Constitution of India. This decision is also followed by this court in Special Civil Application No. 1252 of 2000 and others decided on 10.3.2000. It would be interesting to reiterate the important celebrated passage.

"It would be, really, interesting to quote a passage of the author H.W.R. Wade in Administrative Law, 5th Edition, at page 592:

> The discretion to withhold remedies against unlawful action may make inroads upon the rule of law and must therefore be exercised with the greatest care. In any normal case, the remedy accompanies the right. But the fact that a person aggrieved is entitled to certiorari ex debito justitiae does not alter the fact that the court has power to exercise its discretion against him, as it may in the case of any discretionary remedy. This means that he may have to submit to some unlawful administrative act which is ex hypothesi ultra vires. For, as has been observed earlier, a void act is in effect a valid act if the court will not grant relief against it."

30. It will be, now, interesting to examine whether any of the exceptions is attracted in so far as the affiliated Co-operative Societies in the present group of petitions are concerned. In the first group of petition the challenge is against the inclusion of 63 affiliated societies in the final voters' list. After having taken into consideration various facts and circumstances and the submissions, the inclusion of 63 affiliated societies' names in the final voters' list by the Returning Officer cannot be said to be illegal, ultra vires or without jurisdiction. It does not fall in any one of the exceptions and therefore, the petition is required to be rejected.

31. The Returning Officer has filed affidavit-in-reply and categorically, stated that though initially, the concerned Bank placed 63 respondents affiliated societies in the first group of petition were shown as disqualified in a separate list out of 101, upon exercising statutory power and enquiry it is found that they were not such defaulters before publication of the final list. Rule 4 of 1982 Rules provides for

provisional list of voters whereas Rule 5 provides for particulars to be included in the provisional list of voters. Once in purported exercise of powers under Rule 4 of 1982 Rules, provisional list of voters is prepared, in the present case, which was prepared on 15.3.2000, the claims and objections to the provisional list of voters are required to be dealt with and decided by the Returning Officer Officer. Rule 6 of 1982 Rules deals with situation as to how the claims and objections to the provisional list of voters' claim are required to be dealt with and decided. It reads as under:

"Rule 6(1) - When any provisional list of voters is published for inviting claims and objections, any omissions or error in respect of the name or address or other particulars in the list may be brought to the notice of the Collector by any member of the society concerned who is a voter or any delegate authorised to vote on behalf of such society.

(2) Every person making a claim or raising an objection shall do so by a separate petition, which shall be presented to the Collector during office hours within seven days from the date on which the provisional list of voters is displayed on the notice board under sub-rule (2) or (5) of Rule 4, as the case may be.

(3) Every claim or objection shall be prepared in writing and state the grounds on which the claim is based or the objection is raised, as the case may be.

(4) The Collector shall, after considering each claim or objection, give his decision thereon in writing to the person concerned within ten days from the date of receipt of the claim or objection under sub-rule (2) and take steps to correct the provisional list wherever necessary. The list as finalised by the Collector after deciding all claims and objections shall be the final list of voters."

32. The respondent Returning Officer in his affidavit has stated that claims and objections to the provisional list was called for under Rule 6 of 1982 Rules. The respondents 63 affiliated societies in the first group of petition satisfied that they were not defaulters and therefore their names came to be included in the final voters' list whereas in case of 19 petitioners societies

in the second group of petition were found to be defaulters though opportunity of hearing by way of notice was given and hearing as such was fixed on March 27, 2000, the petitioners in the second group of petition have not availed of such opportunity and therefore their names came to be excluded.

33. Precisely, challenge is, therefore, made in second group of petition by 19 petitioners societies. All the petitioners societies have strongly contended that they were not defaulters and therefore they were not disqualified and non-inclusion of their names in the final voters' list was, totally, unjust and perverse and against the principles of natural justice. In support of this contention, various documents are relied on. All the petitioners except petitioners in Special Civil Application Nos. 3336 of 2000, 3345 of 2000 and 3346 of 2000 have produced documentary evidences, in form of their affidavits, to substantiate the plea that there were no arrears or debt of the bank and that they were not defaulters. Out of 19 petitions, barring the aforesaid petitions, in 16 petitions documentary evidence is produce and there is no reason to discard it as it is remained unchanged. Letter, before the hearing date of 27.3.2000, had been sent on the letter pad of the affiliated society which bears the date of receipt by the dispatch clerk of the Deputy Collector's office. No affidavit is filed to show that the letter before 27.3.2000 was not received by the office of the respondent Returning Officer. Therefore, there is no reason to discard this documentary evidence which is in support of the affidavit of the petitioners. Not only that, the specified society, namely, Bank, by its certificate dated 1.4.2000 signed by the Deputy Manager, Morbi Zone, clearly, stated that 16 petitioners societies except three petitioners societies in the aforesaid three petitions i.e. SCA No. 3336/2000, 3345/2000 and 3346/2000, made written representation within the stipulated period, to the respondent Returning Officer stating that they were not defaulters. It is also clear from the certificate that pursuant to the written representation by the petitioners to the Board of Directors, the concerned Branch Manager of the Bank certified that there were no arrears or dues of the petitioners societies. It is, thus, clearly, certified that before the relevant date, 16 petitioners societies, names of which are enumerated in the certificate, were not defaulters. This certificate fully supports the written representation sent to the respondent bearing the initial of the dispatch clerk and supported by the affidavit of each petitioner. Unfortunately, the

petitioners in the aforesaid three petitions, namely, SCA Nos. 3336 of 2000, 3345 of 2000 and 3346 of 2000 could not tender their documents at the relevant time.

34. In view of the aforesaid facts and circumstances it becomes crystal clear that all the petitioners of the affiliated societies in second group of petition except petitioners in aforesaid three Special Civil Applications, have satisfied the court that they were not defaulters and the inclusion of their names in the defaulters list by the Bank at the relevant time and acceptance of the same by the Returning Officer, is palpably, wrong, manifestly, perverse and against the principles of natural justice. The Returning Officer has failed to perform his function under Rule 6(4) of 1982 Rules before finalising the voters' list and while deciding the claims and objections of the 16 petitioners affiliated societies. Therefore, 16 petitioners affiliated societies in the second group of petition are entitled to be included in the final voters' list as there was no default on their part on the relevant date, despite which, the Returning Officer, upon exercise of his power under Section 26(4) of the Bye-Laws excluded their names from final voters' list. Therefore, it is necessary to direct the respondent Returning Officer to include the names of 16 petitioners affiliated societies in the final voters' list so as to enable them to exercise their right to vote in the elections to be held tomorrow for the Managing Committee of the Bank.

35. After having taken into consideration relevant facts and circumstances, the propositions of law highlighted hereinabove, Special Civil Application No. 2450 of 2000 challenging inclusion of 63 respondent societies in the first group of petition in the final voters' list for tomorrow's election is rejected. Rule discharged.

Whereas in the second group of petitions, all petitions except Special Civil Application Nos. 3336 of 2000, 3345 of 2000 and 3346 of 2000, are allowed. The aforesaid three petitions shall stand rejected. Rule is made absolute in all petitions except the aforesaid three petitions , namely SCA No. 3336/2000, 3345/2000 and 3346/2000 in which rule is discharged.

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